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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,658	03/17/2004	Rodrick A. HERDMAN	EZL-001M	2657

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MASON, OH 45040

EXAMINER

GALL, LLOYD A

ART UNIT	PAPER NUMBER
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3676

DATE MAILED: 02/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/708,658

Applicant(s)

HERDMAN, RODRICK A.

Examiner

Lloyd A. Gall

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 16-21, 29-33 and 35-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15, 22-28 and 34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-35, drawn to a changeable lock assembly, classified in class 70, subclass 383.
- II. Claims 36-39, drawn to a method of making a changeable lock assembly, classified in class 70, subclass 1.
- III. Claims 40-43, drawn to a method of machining a plug, classified in class 70, subclass 1.

The inventions are distinct, each from the other because of the following reasons:

Inventions Group II/Group III and Group I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product can be made by a materially different process, such as molding the plug, instead of machining its cavities and slots.

Inventions Group II and Group III are regarded as different method species.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

This application contains claims directed to the following patentably distinct species of the claimed invention: 1.) The species of figs. 1-22; 2.) the species of figs. 23-28; 3.) the species of figs. 29-36; 4.) the species of figs. 37-40; and 5.) the species of figs. 41A and 41B.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, at least claim 7 appears to be generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record

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showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Mr. Nesbitt on January 11, 2005 a provisional election was made with traverse to prosecute the invention of Group I and the species of figs. 1-22, claims 1-15, 22-28 and 34. Affirmation of this election must be made by applicant in replying to this Office action. Claims 16-21, 29-33 and 35-43 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "instructions" and the "means for securing" in paragraphs d and e of claim 5 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

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consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claims 1, 6, 7, 10-13, 24 and 34 are objected to because of the following informalities: In claim 1, line 2, "key" should be replaced with --keys--. In claim 6, line 3, the second occurrence of "the" should be deleted. In claim 6, line 14, "in the lock" is not clear, since the lock is apparently the entire assembly. See claim 7, line 10 and claim 24, lines 10-11 also. In claim 7, line 3, the second occurrence of "the" should be deleted. In claim 10, line 3, there is no antecedent basis for "the change tool". In claim 11, lines 3 and 4, there is no antecedent basis for "the change tool" and "the second passage". In claim 12, lines 3 and 4, there is no antecedent basis for "the change tool" and "the second passage". In claim 13, lines 1-2, there is no antecedent basis for "the plurality of contour locations". In paragraph "f", line 2 of claim 34, "tumbler" should be replaced with --a driver--. Appropriate correction is required.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 6-15, 22, 24-28 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Monahan (002).

Monahan teaches all of the claimed article and method of using limitations, including a housing 30, a plug 34, springs 49, drivers 44, pins 45, plural keys with different (raised and lowered" contour edges received in keyway passage 62, a change tool slot 52, a change tool 51, change members 47 moved by the change tool as seen in figure 14 after the plug is rotated. With respect to claim 22, Monahan also teaches a shim defined by the topmost wafer 47 as seen in figure 12.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Monahan (0020 in view of Check (692).

Monahan has been discussed above. Check teaches using a ball as a change member as seen in figures 6-8. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute balls for the change members of Monahan, in view of the teaching of Check, since any shape of change member would function just as well to re-key the lock.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Monahan (002) in view of Check and Paig.

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Monahan and Check have been discussed above. Paig teaches a package 10 and including instructions for use (column 3, line 36). It would have been obvious to substitute balls for the change members of Monahan, in view of the teaching of Check, since any shape of change member would function just as well in re-keying the lock of Monahan. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide instructions and a package for the lock of Monahan as modified by Check, in view of the teaching of Paig, to aid in the sale and use of the lock.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Monahan (002) in view of Smith (188).

Monahan has been discussed above. In figure 94, Smith teaches a shim 583 of a first diameter and a retainer cavity 545 of a second, smaller diameter. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a larger diameter shim with a retainer cavity of Monahan, in view of the teaching of Smith.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lloyd A. Gall whose telephone number is 703-308-0828 and after April 2005 at 571-272-7056. The examiner can normally be reached on Monday-Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bagnell can be reached on 703-308-2151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LG LG
January 28, 2005


Lloyd A. Gail
Primary Examiner